

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ILLINOIS NATIONAL INSURANCE COMPANY,  
THE INSURANCE COMPANY OF THE STATE OF  
PENNSYLVANIA, and NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA,

Plaintiffs,

v.

TUTOR PERINI CORPORATION,

Defendant,

v.

CERTAIN UNDERWRITERS AT LLOYD'S,  
LONDON,

Third-Party  
Defendant.

CASE NO. 11-CV-00431

**AFFIDAVIT OF JOSHUA W. GARDNER AUTHENTICATING APPENDIX OF  
DOCUMENTS IN SUPPORT OF CHARTIS INSURERS'  
MOTION FOR SUMMARY JUDGMENT**

I, Joshua W. Gardner, state as follows:

1. I am an attorney at Edwards Wildman Palmer LLP and counsel to the Chartis Insurers in this action. This affidavit is based on my personal knowledge and is made to present to the Court true copies of documents relevant to the Chartis Insurers' Motion for Summary Judgment.

2. Exhibit 1A to the Appendix is a true and accurate copy of First Amended Complaint for Declaratory Relief dated June 28, 2011 and Exhibit 1B is a true and accurate copy of Tutor Perini Corporation ("Tutor")'s Answer And First Amended Counterclaims in this action dated June 20, 2012.

3. Exhibit 2A to the Appendix is a true and accurate copy of a Rule 30(b)(6) deposition notice propounded on Tutor, and Exhibit 2B is a true and accurate copy of excerpts from the Rule 30(b)(6) deposition of Terrence Flynn held on July 19, 2012.

4. Exhibit 3A to the Appendix is a true and accurate copy of a Rule 30(b)(6) deposition notice propounded on Tutor, and Exhibit 3B is a true and accurate copy of excerpts from the Rule 30(b)(6) deposition of John E. Hughes held on May 9, 2012.

5. Exhibit 4 to the Appendix is a true and accurate copy of a document produced by the MTA in this action and bates labeled MTA\_C\_009326. The document is Deposition Exhibit 4 and is an April 22, 2008 Letter from W. Montanile to S. Pudar Re: 100<sup>th</sup> Street Bus Depot Emergency Repairs.

6. Exhibit 5 to the Appendix is a true and accurate copy of Tutor's Responses And Objections To Plaintiffs First Set of Interrogatories in this action dated September 9, 2011.

7. Exhibit 6 to the Appendix is a true and accurate copy of a document produced by the Chartis Insurers in this action and bates labeled CHARTIS 00990 – CHARTIS 00992. The document is Deposition Exhibit 10 and is a January 6, 2009 letter from J. Hughes to D. Pattern Re: brick façade failure at the 100<sup>th</sup> Street Bus Depo.

8. Exhibit 7 to the Appendix is a true and accurate copy of a document produced by the Chartis Insurers in this action and bates labeled CHARTIS 01345 – CHARTIS 01416. The document is Deposition Exhibit 18 and is a January 21, 2010 Letter from A. Folster to S. Weinstein Re: Repairs of Brick Façade – OCIP Claim.

9. Exhibit 8 to the Appendix is a true and accurate copy of a document produced by the MTA in this action and bates labeled MTA\_C\_009340. The document is Deposition Exhibit

3 and is an April 8, 2008 Email from J. Loftus to C. Crawford Re: 100 St Bus Depot façade failure.

10. Exhibit 9 to the Appendix is a true and accurate copy of a document produced by the MTA in this action and bates labeled MTA00012667 – MTA00012668. The document is Deposition Exhibit 5 and is an April 21, 2008 Email from J. Patel to G. Robinson Re: FW Pictures 100<sup>th</sup> Street Depot.

11. Exhibit 10 to the Appendix is a true and accurate copy of a document produced by the MTA in this action and bates labeled MTA\_C\_009312. The document is Deposition Exhibit 6, and is an April 24, 2008 Letter from J. Loftus to W. Montanile Re: 100<sup>th</sup> Street Bus Depot Emergency Repairs.

12. Exhibit 11 to the Appendix is a true and accurate copy of a document produced by the MTA in this action and bates labeled MTA\_C\_008899 – MTA\_C\_008900. The document is Deposition Exhibit 7, and is a July 18, 2008 Letter from W. Montanile to S. Pudar Re: 100<sup>th</sup> Street Bus Depot Emergency Repairs.

13. Exhibit 12 to the Appendix is a true and accurate copy of a document produced by the MTA in this action and bates labeled MTA\_C\_009862 – MTA\_C\_009863. The document is Deposition Exhibit 8, and is a August 4, 2008 Letter from J. Loftus to W. Montanile Re: Contract Warranty.

14. Exhibit 13 to the Appendix is a true and accurate copy of a document produced by the MTA in this action and bates labeled MTA\_C\_009852. The document is Deposition Exhibit 9, and is an August 20, 2008 Letter from W. Montanile to J. Loftus Re: 100<sup>th</sup> Street Bus Depot Emergency Repairs.

15. Exhibit 14 to the Appendix is a true and accurate copy of a document produced by Tutor in this action. The document does not have a bates number. The document is a January 13, 2009 Letter from J. Frost to D. Morgenroth Re 100 Street Bus Depot – Brick Façade.

16. Exhibit 15 to the Appendix is a true and accurate copy of emails concerning the Corrective Work Agreement produced by Tutor in this action. The emails do not have bates numbers.

17. Exhibit 16 to the Appendix is a true and accurate copy of a document produced by Tutor in this action and bates labeled TP003352 – TP03358. The document is Deposition Exhibit 15, and is a June 22, 2009 Agreement between the MTA and Perini.

18. Exhibit 17 to the Appendix is a true and accurate copy of a document produced by the Chartis Insurers in this action and bates labeled CHARTIS 01101 – CHARTIS 1120. The document is Deposition Exhibit 12, and is a January 14, 2009 Letter from J. Hughes to A. Sledge Re 100<sup>th</sup> Street Depot Construction.

19. Exhibit 18 to the Appendix is a true and accurate copy of a document produced by the Chartis Insurers in this action and bates labeled CHARTIS 01569 – CHARTIS 01572. The Document is the cover email dated August 9, 2010 from J. Ganzer to R. Donley, and the attachment, Deposition Exhibit 102.

20. Exhibit 19 to the Appendix is a true and accurate copy of excerpts from the deposition of Jeffrey Ganzer held on June 26, 2012.

21. Exhibit 20 to the Appendix is a true and accurate copy of a document produced by Tutor in this action bates labeled TP029747. The Document is Deposition Exhibit 104 and is a December 23, 2010 Email from R. Donley to J. Ganzer Re: 100 St. Bus Depot, Claim #683-2511747.

22. Exhibit 21 to the Appendix is a true and accurate copy of a document produced by the Chartis Insurers in this action bates labeled CHARTIS 01824 – CHARTIS 01836. The Document is Deposition Exhibit 105 and is a true and accurate copy of a Letter dated December 23, 2010 to J. Hughes from J. Ganzer Re: Chartis coverage.

23. Exhibit 22 to the Appendix is a true and accurate copy of a document produced by the Chartis Insurers in this action bates labeled CHARTIS 00958 – CHARTIS 00970. The Document is a letter dated November 10, 2010 from J. Hughes to J. Ganzer Re: Chartis Insurance Position.

24. Exhibit 23 to the Appendix is a true and accurate copy of a Illinois National Insurance Company Policy #933-04-07 for March 1, 2003 to March 1, 2004. The documents was produced by Chartis and is bates labeled CHARTIS 02825 – CHARTIS 02885.

25. Exhibit 24 to the Appendix is a true and accurate copy of a certified copy of The Insurance Company of the State of Pennsylvania Policy #161-68-85, for May 31, 2007 through May 31, 2008. The document was produced by the Chartis Insurers and is bates labeled CHARTIS 02220 – CHARTIS 02318.

26. Exhibit 25 to the Appendix is a true and accurate copy of a certified copy of National Union Fire Insurance Company of Pittsburgh, PA Policy #6799721 for May 31, 2007 to May 31, 2008. The document was produced by the Chartis Insurers in this action and bates labeled CHARTIS 02475 – CHARTIS 02548.

27. Exhibit 26 to the Appendix is a true and accurate copy of a certified copy of Illinois National Insurance Company policy GL 161-70-34 for October 1, 2007 to October 1, 2008. The document was produced by Chartis Insurers in this action.

28. Exhibit 27 to the Appendix is a true and accurate copy of the WJE report dated July 2, 2009. The document was produced by Tutor and is bates labeled TP006393 to TP006474.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 28<sup>th</sup> DAY OF JULY.

/s/ Joshua W. Gardner  
Joshua W. Gardner